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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-191595

DATE May 25, 1978

MATTER OF: The Duncanson-Harrelson Co.

DIGEST:

Where documents submitted by protester indicate that award under small business set-aside was properly made under ASPR § 1-703(b)(3)(iii) during pendency of appeal to Size Appeals Board, GAO will not interfere with contract performance notwithstanding fact that awardee was subsequently found to be large business concern by SBA Size Appeals Board.

The Duncanson-Harrelson Co. protests the January 19, 1978 award of small business set-aside contract No. N62474-76-C-7336 to Novato Construction Co. (Novato) by the Naval Facilities Engineering Command on the ground that the Small Business Administration (SBA) has determined that Novato is not a small business concern.

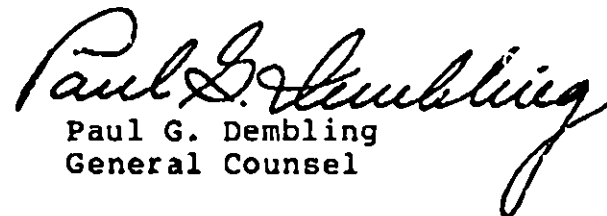
Award of this contract followed an initial determination by the San Francisco District Office of the SBA that Novato was a small business concern. Subsequently, the SBA Size Appeals Board reversed the District Office in a decision holding that Novato's affiliation with M. M. Sundt Construction Company rendered it other than a small business concern. We have been advised that a petition for reconsideration has been filed by Novato.

Armed Services Procurement Regulation (ASPR) § 1-703(b)(3)(iii) provides that the contracting officer may award a contract on the basis of an SBA District Director's size determination, notwithstanding knowledge of an appeal to the Size Appeals Board, if the contracting officer does not receive a Board determination within 30 working days of the filing of the initial protest with the SBA District Office. In this case, the award was made on the thirtieth day following

the District Director's determination (i.e., more than 30 days after the initial size protest was filed) and is, therefore, authorized under the cited regulation.

Our Office has frequently been asked to recommend termination of small business set-aside contracts which, though awarded in accordance with applicable regulations, have been known after award to result in performance by other than small businesses. In the past, we have recommended termination of contracts when the contractor's self-certification as a small business was made in bad faith. Bancroft Cap Co. et. al., 55 Comp. Gen. 469, 75-2 CPD 321. Recently, however, in CADCOM, Inc., B-189913, February 16, 1978, 78-1 CPD 137, we stated that because SBA currently was requiring that to be eligible for award of small business set asides a firm be small both at bid opening or the date of submission of proposals and at the date of award, SBA has eliminated both the basis and the need for our review of the good faith of the challenged firm's self-certification. The fact that the SBA Size Appeals Board untimely determined that the firm was a large business concern, in our opinion, does not justify our review of the matter.

Consequently, the protest is dismissed.


Paul G. Dembling
General Counsel